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compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with §§817.111 through 817.116. Operation of the disposal site shall be conducted in accordance with all local, State, and Federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall any excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

[48 FR 44031, Sept. 26, 1983, as amended at 56 FR 65636, Dec. 17, 1991; 81 FR 93418, Dec. 20, 2016; 82 FR 54999, Nov. 17, 2017]

§817.95 Stabilization of surface areas.

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams; shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

[48 FR 1163, Jan. 10, 1983, as amended at 81 FR 93418, Dec. 20, 2016; 82 FR 54999, Nov. 17, 2017]

§817.97 Protection of fish, wildlife, and related environmental values.

(a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental

values and shall achieve enhancement of such resources where practicable.

(b) *Endangered and threatened species.* No underground mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regulatory authority any State- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(c) *Bald and golden eagles.* No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the regulatory authority any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 *et seq.*

(e) Each operator shall, to the extent possible using the best technology currently available—

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the regulatory authority

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determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals except where the regulatory authority determines that such requirements are unnecessary; and

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(f) *Wetlands and habitats of unusually high value for fish and wildlife.* The operator conducting underground mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Underground mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator shall intersperse

reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

[48 FR 30328, June 30, 1983, as amended at 52 FR 47360, Dec. 11, 1987; 81 FR 93418, Dec. 20, 2016; 82 FR 54999, Nov. 17, 2017]

§ 817.99 Slides and other damage.

At any time a slide occurs which may have a potential adverse effect on public, property, health, safety, or the environment, the person who conducts the underground mining activities shall notify the regulatory authority by the fastest available means and comply with any remedial measures required by the regulatory authority.

[44 FR 15422, Mar. 13, 1979, as amended at 81 FR 93418, Dec. 20, 2016; 82 FR 54999, Nov. 17, 2017]

§ 817.100 Contemporaneous reclamation.

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all areas affected by surface impacts incident to an underground coal mine shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under § 785.18 of this chapter. The regulatory authority may establish schedules that define contemporaneous reclamation.

[48 FR 24652, June 1, 1983, as amended at 81 FR 93418, Dec. 20, 2016; 82 FR 54999, Nov. 17, 2017]

§ 817.102 Backfilling and grading: General requirements.

(a) Disturbed areas shall be backfilled and graded to—

(1) Achieve the approximate original contour, except as provided in paragraph (k) of this section;

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in paragraph (h) (small depressions) and in paragraph (k)(2) (previously mined highwalls) of this section;

(3) Achieve a postmining slope that does not exceed either the angle of